

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Derek Clements, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	C.A. No. 2:22-2069-RMG
v.)	
)	
Lloyd J. Austin, III, Secretary of)	
Defense., <i>et al.</i> ,)	
)	ORDER
Defendants.)	
)	

Plaintiffs have moved for leave to amend their complaint to dismiss all Defendants except Secretary of Defense Lloyd Austin and to dismiss their claims under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 *et seq.*, and the First Amendment. (Dkt. No. 28). This would leave at issue in this litigation three claims asserted under the Administrative Procedures Act (APA), 5 U.S.C. § 551 *et seq.* Defendants have advised the Court they do not oppose the Plaintiffs’ motion to amend under these circumstances. (Dkt. No. 31). For good cause shown, Plaintiffs’ unopposed motion to amend their complaint is granted. Plaintiffs are directed to promptly file their amended complaint.

Plaintiffs have further moved for the Court to reconsider its decision to sever and to vacate the Order. (Dkt. No. 28). Plaintiffs oppose the motion, asserting the decision severing the claims as presented “was correctly decided and should not be reconsidered.” (Dkt. No. 31). Defendants assert that, in the alternative, Plaintiffs other than Clements should voluntarily dismiss their pending cases and then move to be added back into the *Clements* case through the amended complaint. (*Id.*).

The Court denies the motion to reconsider. The Court's order to sever is correctly decided and the precedent may be of value to district courts and litigants confronted with a similar situation. In the event Kloster, Pokrant, and Vasiliu wish to join this action (C.A. No. 2:22-2069), they may serve as plaintiffs in this action (as anticipated in the proposed amended complaint at Dkt. No. 28-2) upon their voluntarily dismissal without prejudice of their pending actions. If Kloster, Pokrant and Vasiliu are unwilling to dismiss their pending separate civil actions (C.A. Nos. 2:22-2411, 2:22-2412, 2:22-2413), they may not serve as plaintiffs in this action since this would constitute improper "claims splitting." *Lee v. Norfolk Southern Railway Company*, 802 F.3d 626, 635 (4th Cir. 2015).

Based on the foregoing, Plaintiffs' motion to amend and reconsider (Dkt. No. 28) is granted in part and denied in part. The motion to amend is granted. The motion to reconsider is denied.

AND IT IS SO ORDERED.

s/ Richard M. Gergel
Richard M. Gergel
United States District Judge

August 9, 2022
Charleston, South Carolina